IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

OP.No. 16688 of 1998(J)

PETITIONER:

M.DORAISWAMY,
KRISHNA STORES,
PALAKKAD.

BY ADV. SRI.JOSE JOSEPH

RESPONDENTS:

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1. THE INTELLIGENCE OFFICER,
(INVESTIGATION BRANCH)
OFFICE OF THE DEPUTY COMMISSIONER
(INTELLIGENCE), BOARD OF REVENUE
(TAXES), KOZHIKODE.

2. THE DEPUTY COMMISSIONER,
AGRICULTURAL INCOME TAX & SAELS TAX,
KOZHIKODE.

3. THE BOARD OF REVENUE(TAXES), TRIVANDRUM,
REP. BY ITS SECRETARY, NOW DESIGNATED AS
COMMISSIONER (COMMERCIAL TAX).

4. THE ADDITIONAL SALES TAX OFFICER I,
IST CIRCLE, PALAKKAD.

5. THE DEPUTY COMMISSIONER, AGRICULTURAL
INCOME TAX & SALES TAX, PALAKKAD.

6. THE TAHSILDAR(R.R.), PALAKKAD.

BY GOVERNMENT PLEADER SRI.PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.29609/1998 IN O.P. NO.16688/1998

DISMISSED:

14.11.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF NOTICE ISSUED BY R1 U/S.45A OF THE KGST ACT TO THE PETITIONER DT.27.11.96.

P2: TRUE COPY OF THE PETITIONER'S REPLY TO EXT.P1 NOTICE DT.17.12.96.

P3: TRUE COPY OF OBJECTION FILED BY PETITIONER BEFORE R1 DT.8.2.97.

P4: TRUE COPY OF ORDER OF R1 TO THE PETITIONER DT.15.2.97.

P5: TRUE COPY OF ORDER OF R2 IN STRP NOS.39 TO 42/97 DT.3.1.98.

P6: TRUE COPY OF REVISION PETITION FILED BY PETITIONER BEFORE R3 FOR THE YEAR 1989-90 DT.2.2.98.

P7: TRUE COPY OF REVISION PETITION FOR THE YEAR 1988-89 FILED BY PETITIONER BEFORE R3 DT.2.2.98.

P8: TRUE COPY OF REVISION PETITION FOR THE YEAR 1989-90 FILED BY PETITIONER BEFORE R3 DT.2.2.98.

P9: .DO. 1991-92 .DO.

P10: TRUE COPY OF DEMAND NOTICE ISSUED BY R6 U/S.7 OF THE RR ACT DT.3.2.98.

P10A: TRUE ENGLISH TRANSLATION OF EXT.P10 DT.3.2.98.

P11: TRUE COPY OF ORDER OF R3 IN STRP NOS.30 TO 33/1998 DT.12.6.98.

P12: TRUE COPY OF ORDER OF R4 DT.31.5.96.

P13: TRUE COPY OF ORDER OF R5 IN R.P. NO.24/96 DT.14.7.97.

P14: TRUE COPY OF REVISION PETITION FILED BY PETITIONER BEFORE R3 DT.13.6.97.

P15: TRUE COPY OF ORDER OF R3 IN STRP NO.545/97 DT.30.6.98.

P16: TRUE COPY OF NOTICE ISSUED BY R6 TO THE PETITIONER DT.30.7.98.

P16A: TRUE ENGLISH TRANSLATION OF EXT.P16 DT.30.7.98.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.16688 of 1998

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Dated this the 14th day of November, 2007.

JUDGMENT

The petitioner is challenging Exts.P11 and P15 orders issued by the Member, Board of Revenue confirming penalty levied under Section 45A of the KGST Act. The petitioner, a wholesaler of grocery, made unaccounted purchases from dealers in Madurai and sold goods without payment of tax in Kerala for the assessment years 1988-89, 1989-90 and 1990-91. The department collected copies of ledger extracts of the suppliers in Madurai from the Commercial Tax Department in Madurai. Based on the same, petitioner's books of accounts were called for. While the petitioner produced books of accounts for two years, no books were produced for the other year. Even though petitioner denied the transactions, the adjudicating officer relying on the ledger extracts of the suppliers made available by the Tamil Nadu Sales Tax authorities levied penalty for unaccounted purchase and sale by the petitioner. While penalty levied for 1990-91 is only one and a half times tax sought to be evaded, penalty levied is double the amount of tax for other years. The penalty orders are confirmed in two rounds of revision. The O.P. is filed against the same.

2. Counsel for the petitioner contended that petitioner was not given an opportunity to cross-examine the suppliers whose ledger accounts were relied on by the Department. Besides this, he has contended that petitioner was not given copies of Check Post records and consignor's bills. Government Pleader submitted that Department has not relied on the consignor's bills or Check Post records and therefore, there is no necessity to supply the same to the petitioner. I am of the view that petitioner is entitled to only copies of documents relied on by the Department in the penalty proceedings against him. However, petitioner cannot challenge penalty orders on account of non-supply of documents which do not constitute basis for the penalty. I do not think the denial of opportunity to cross-examine the supplier also is a ground to interfere with penalty orders because the accounts of the petitioner for subsequent years show that all the supplies are from the same suppliers and petitioner has accounted credit purchases from such dealers. Therefore, if the ledger accounts of the suppliers do not pertain to petitioner's purchases, petitioner could have obtained confirmation letters from them to that effect and cross-examination arises only if suppliers support the department. The ledger accounts seized by the Department from the suppliers obviously were maintained in the usual course of business and suppliers have not denied the transactions to

Tamil Nadu Sales Tax authorities from whom it was collected by the department. Therefore, such copies of ledger accounts supplied by the Tamil Nadu Sales Tax authorities were rightly relied on by the department. In the circumstances, the challenge against impugned orders on ground of violation of natural justice is not tenable and hence rejected. Moreover, I find from judgment in T.R.C. Nos.293 and 294 of 1998 produced by the petitioner that additions are made in the assessment and petitioner has remitted tax. Moreover, for the year 1990-1991 penalty levied is only one and a half times the tax sought to be evaded. I do not find any justification to levy maximum penalty for the other years. In the circumstances, O.P. is disposed of confirming the penalty for 1990-91, but modifying the orders of penalty for the other years by reducing it to one and a half times the tax sought to be evaded.

C.N.RAMACHANDRAN NAIR
Judge

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